

\*In general waste is the abuse, or destructive use of property by him who has not an absolute unqualified title. **572** And in general trespass is an injury, or use, without authority, of the property of another, by one who has no right whatever.

At common law, if the owner of the inheritance had good reason to believe, that a tenant in dower, or by the courtesy, or a guardian designed to commit waste, he might, before any waste was done, have a prohibition directed to the sheriff, commanding him to prevent it from being done; and in execution of this writ of prohibition, the sheriff might, if necessary, call to his aid the *posse comitatus*. This writ was extended, by a statute passed in the year 1267, to tenants for life and for years: and afterwards, in 1285, it was taken away, and another form of writ given in its place; but when the Court of Chancery first granted injunctions, it seems to have taken its jurisdiction, from this writ of prohibition of waste. *Co. Litt.* 53; 2 *Inst.* 299, 389; 52 *Hen.* 3, c. 23; 13 *Edw.* 1, c. 14; *Kitt. Rep.* 209, 212; *Jefferson v. Bishop of Durham*, 1 *Bos. & Pul.* 108, 121; *Goodeson v. Gallatin*, *Dick.* 455.

After waste had been actually committed, the ancient corrective remedy, in a Court of common law, was by a writ of waste, for the recovery of the place wasted and treble damages, as a compensation for the injury done to the inheritance. *Co. Litt.* 53; 2 *Inst.* 300. There were however, several cases to which the writ of waste did not extend; and as to such cases, the party was left

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or they are reserved for public use, as for ship building, or the like, it is then held to be waste to fell such trees: and the tenant in fee simple, may be restrained from cutting them by injunction.—*Jacob L. Dict. verb Waste*; *Bishop of Winchester v. Wolgar*, 3 *Swan.* 493, note. By a clause in the Colonial Charter of Massachusetts; and, by several Acts of Parliament, all white pine trees of the diameter of twenty-four inches and upwards, of twelve inches from the ground, growing in Maine, New Hampshire, Rhode Island, Connecticut, New York, and New Jersey, were, under the Colonial Government, reserved to the use of the Crown for masting the royal navy. This white pine, the ancient and majestic inhabitant of the North American forest, says Michaux, is still the loftiest and most valuable of their productions, and its summit is seen at an immense distance, aspiring towards heaven, in some instances to the height of one hundred and eighty feet from the ground, and far above the heads of the surrounding trees. The felling of any of these white pines was prohibited by a heavy penalty, made recoverable in the Colonial Courts of Vice-Admiralty, without a trial by jury. The claims of right to these trees, and the execution of the laws for their preservation, produced much irritation among the colonists; inso-much so, that the controversies respecting them, in those colonies to which the statutory prohibition of felling them extended, may be considered as some among the minor causes of the Revolution.—9 *Anne*, c. 17; 8 *Geo.* 1, c. 12; 2 *Geo.* 2, c. 35; 1 *Chal. Opin. Em. Law*, 111, 116, 119, 137; 2 *Hutch. His. Mass.* 228; 2 *Belk. N. Hamp.* 28, 89, 128; *Michaux's Sylva art. White Pine*.—Since the Revolution Congress have deemed it expedient to make similar reservations of the Live Oak, and Red Cedar, growing on the public lands, for the use of the navy,—1st March, 1817; ch. 22; 2d March, 1831, ch. 65.